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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/690,136 07/31/96 BRADY

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IM22/0106

EXAMINER

TARAZANO, D

ART UNIT

PAPER NUMBER

1773

DATE MAILED:

01/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
08/690,136

Applicant  
Brady et al.

Examiner  
D. Lawrence Tarazano

Group Art Unit  
1773



☒ Responsive to communication(s) filed on Oct 26, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 19-28 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 19-28 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on 10-26-99 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/690,136 is acceptable and a CPA has been established. The applicant has canceled the method claims, only the article claims remain. An action on the CPA follows.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 22 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims have the recitation "homopolymers and copolymers of polyethylene and polypropylene, and combinations thereof" This recitation is confusing for the following reasons: It is not clear if the applicants mean only ethylene-propylene copolymers or copolymers of each of these individual materials. It is also not clear if combination relates to monomers present or blends of polymers.

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*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 19, 20, 21, 22, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheth (4,929,303).

Sheth teaches embossed films which have been laminated to a non-woven fabric (column 6, lines 39+), in which the films comprise a 50/50 blend of LDPE and calcium carbonate (table II), said films have large WVTR which are well above the applicants' claimed minimum value.

6. Claims 19-23, 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheth et al. (5,055,338).

Sheth et al. teach embossed films which are then metallized. These films are produced from a blend of polyethylene material and inorganic filler (50/50 blend of LLDPE and calcium carbonate)

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and polyisobutylene, example 1). The films also can comprise elastomers to improve the strength and softness of the resulting films (column 5, lines 13+).

The films are formed by a tubular extrusion process which results in the formation of a tubular film which is blown, and then stretched on rollers using conventional techniques. The tubular film is embossed after it has been formed (columns 5 and 6), especially column 6, lines 8+.

A collapsed tubular film as shown by Sheth et al. would correspond to the claimed two layer structure. These films have high WVTR relates in both the metallized and un-metallized forms as shown by example 1. While the example is produced by cast extrusion, Sheth et al. teach how to produce blown films with very clear specificity and thus the claimed two layer structure is anticipated. The teachings of a reference is not limited solely to the working examples: the teachings of the reference as a whole and the ordinary skill of the art must be taken into consideration.

7. Claims 19, 20, 21, 22, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Wu et al. (5,865,926).

Wu et al. teach films which have been embossed by grooved rollers (figures 1 and 2). The films are porous as shown by examples 1, and have the claimed WVTR , and olefin / filler compositions which ave been laminated to a non-woven fibrous web.

Regarding claims 21 and 28 these are process limitations, and the examiner takes the position that these are met by the mere fact that the prior art articles are embossed.

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***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 19, 20, 21, 23, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 1266150 (of record) in view of Schwarz (4,289,832) and Sheth et al. (5,055,338).

JP 1266150 teach filled porous films which comprise a blends of 100 parts of blend of a crystalline polymers such as 20-80% polyethylene and 80-20% of an elastomer such as SBR, styrene butadiene rubber, and 50-200 parts by weight of an inorganic filler. These films are stretched and used as the moisture proof sheet for paper diapers. The applicants are using their films in the same types of environment. The applicants also use their materials in the formation of diapers, and thus these are analogous laminate structures. The also examiner takes official notice that disposable diapers conventionally have layers of fibers.

The essential difference between the structure taught by JP 1266150 and that claimed is the specific WVTR and the embossing of the film structure.

Schwarz teaches that filled films can be embossed using grooved rollers in order to make them porous (column 2, lines 46+).

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Seth et al. teach the concept of how the amount of filler and degree of stretching is related to the porosity of the resulting film (column 4, lines 42-61).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have embossed the films taught by JP 1266150 using the embossing technique taught by Schwarz in order to produce a porous structure.

Regarding the specific WVTR, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have varied the amount of filler and the stretching conditions in order to produce a film having a desired permeability, since the amount of filler and degree of stretching would both be related to the amount of porosity, since each filler particle acts as a nucleus for the formation of a pore and the degree of stretching is related to the size of said pore.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 19-28 have been considered but are moot in view of the new ground(s) of rejection.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (703) 308-2379. The examiner can normally be reached on M-F from 8:30 am to 5:30 pm.

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The official fax number for the art unit is (703)-305-3599. The special fax number for amendments after final is (703)-305-5408. The number for unofficial faxes is (703)-305-5436.

D. Lawrence Tarazano  
January 3, 2000

  
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